**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, DC 20554**

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| In the Matter of: | ) | |
| Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 | ) | CG Docket No. 02-278 |

## COMMENTS OF DIRECTV, INC.

DIRECTV, Inc. ("DIRECTV") hereby submits the following comments to the Further Notice of Proposed Rulemaking in the above-captioned proceeding,[1] which seeks comment on the applicability of the Do Not Call Implementation Act to the pending proceeding.[2] The Do Not Call Act places a strong emphasis on consistency and uniformity, and DIRECTV would urge the Commission to pursue those goals carefully.

## I. THE FCC SHOULD NOT ESTABLISH ANOTHER DO NOT CALL LIST

The Federal Trade Commission is going to establish and maintain a national "do-not-call" registry. The FTC's Telemarketing Sales Rule provides for the establishment of that registry,[3] and Congress has in the Do Not Call Act provided funding for it to do so.[4] There is no reason for the Commission to duplicate this registry with its own do-not-call list.

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1 *See* Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Further Notice of Proposed Rulemaking*, CG Dkt No. 02-278, (rel. March 25, 2003) ("Further Notice").

2 Do Not Call Implementation Act, Pub. L. No. 108-10, 117 Stat. 557 (2003) ("Do Not Call Act").

3 *See* 15 C.F.R. § 310.4(B).

4 *See* Do Not Call Act § 4(b).

Multiple do-not-call lists would burden legitimate businesses such as DIRECTV and others, who would need to check every name they propose to contact against each of those lists. Likewise, because the task of establishing and maintaining a do-not-call list requires labor and capital resources, to establish and maintain two such lists would require twice the investment. Perhaps most importantly, the existence of multiple do-not-call lists would only work against consumers, as individuals who wish to avoid receiving telephone solicitations might find it necessary to subscribe to two lists, instead of one.

This does not mean that the FCC should take no action, however. As several commenters in this proceeding have pointed out, the FTC's jurisdiction and rules may not reach certain parties regulated by the FCC.[5] It would be odd, and indeed unfair, if some companies could operate free from telemarketing restrictions while some of their competitors were subject to those restrictions. The Commission should therefore adopt rules applicable to those entities within the FCC's jurisdiction that would otherwise be exempt. Those rules should recognize the existence of the single federal do-not-call registry that is maintained by the FTC, and generally prohibit entities covered by the FCC's rules from calling individuals listed on that registry.

At the same time, the FCC should establish rules of liability and procedure that are roughly parallel to those established by the FTC's Telemarketing Sales Rule. Specifically, as DIRECTV has stated in its prior comments, the FCC should provide an "established business relationship" exception that is comparable to the FTC's;[6] one that does not include a substantive inquiry into the nature of the relationship or the solicitation.[7] Likewise the FCC should remedy

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5 *See, e.g.,* Comments of National Cable & Telecommunications Ass'n ("NCTA Comments") at 6; WorldCom Comments at 30-36.

6 15 C.F.R. § 310.4(b)(1)(B).

7 *See* DIRECTV Reply Comments at 5.

the confusion caused by its own "on behalf of" opinion,[8] and should make plain that a company cannot be held liable under the TCPA for actions taken by independent third parties without that company's direction or request.[9] In these and other ways, the FCC should establish rules governing the conduct of its own licensees that substantively mimic the FTC's rules, and that incorporate the single national do-not-call registry maintained by the FTC.

## II. THE FCC SHOULD SEEK TO ELIMINATE REDUNDANT STATE REGISTRIES

Although the Do Not Call Act seeks to "maximize consistency," and thus to promote uniformity and certainty for the benefit of business and consumers, there remain a number of state-specific do-not-call registries that work against this statutory end. With a single, national do-not-call registry that applies, by virtue of FTC or FCC rules, to every telemarketer in the United States, there is simply no need for these additional, and inherently redundant, state registries.[10] The public would be well served by the elimination of the state registries and rules.

In order to promote the statutory end of maximizing consistency and uniformity, the FCC should preempt any state regulation of interstate telephone solicitations.[11] Likewise, the FCC should recommend in its report to Congress that Congress should act to preempt state regulation of intrastate telephone solicitations. With a single, national, do-not call registry, there is simply no reason to maintain any others.

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8 "The entity or entities on whose behalf facsimiles are transmitted are ultimately liable for compliance with the rule banning facsimile advertisements." Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Memorandum Opinion and Order*, 10 FCC Rcd 12391 ¶ 35 (1995).

9 *See also* DIRECTV Reply Comments at 5-6.

10 *See* 15 C.F.R. §§ 310.2(v), 310.2(bb).

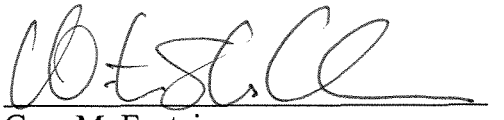
11 There is no question that the FCC possesses authority to preempt state regulation under these circumstances. *See, e.g., Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355, 368-69 (1986).

## III. CONCLUSION

Two or more lists would provide no more benefit than one, but instead would burden business and consumers with additional costs of compliance. The FCC should recognize the existence of a single, national do-not-call registry, and should enforce the FTC-maintained registry through its own rules.

Respectfully submitted,

DIRECTV, Inc.

By: 

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